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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 808

RONALD L. TREE AND NANCY PERKINS FIELD TREE, HIS WIFE,

Petitioners,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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The petitioner prays that a writ of certiorari issue to review the judgment of the Court of Claims of the United States entered on October 2, 1944 (R. 30).

Opinion Below

The opinion of the Court of Claims (R. 28-29) is reported in 55 F. Supp. 438.

Jurisdiction

The judgment of the Court of Claims was entered October 2, 1944 (R. 30). Jurisdiction is conferred on this Court by section 3 (b) of the Act of February 13, 1925, 43 Stat. 939, as amended by the Act of May 22, 1939, 53 Stat. 752.

Question Presented

Whether an annuitant is taxable on a fixed annuity paid to her out of the income of a testamentary trust pursuant to a consent decree and concurrent agreement (between the annuitant and a beneficiary of the trust) providing that the annuity must be paid regardless of the sufficiency or insufficiency of the trust net income.

Statutes Involved

The statutes involved appear in the Appendix, *infra*, pp. 9-10.

Statement

The facts, correctly found by the Court of Claims (R. 8-25), are briefly these:

Marshall Field by his will left the residue of his estate in trust for two grandsons, Marshall Field and Henry Field (R. 9). Each grandson was to receive specified payments out of the trust corpus at specified ages, and, after a period of accumulation, specified portions of the trust income (R. 9-10). These portions of income were to increase as the grandsons became older (R. 10). When the grandson, Marshall, should reach age fifty, the trust estate was to be distributed to each grandson in certain proportions (R. 10). If one of the grandsons should die without issue before the trust estate was distributed, the decedent's share of the trust was to go to the surviving grandson (R. 10).

The co-plaintiff, Nancy Tree, then Nancy Perkins, in 1917 married Henry Field who died later that year (R. 9). In litigation as to the duties of the trustees and the rights, after Henry's death, of the grandson Marshall, the co-plaintiff, then Nancy Field, filed a pleading in which

she claimed dower in Henry's share of the trust realty held during the period of her marriage to Henry (R. 11-12).

Some time prior to July 13, 1920 (the date of the decree mentioned below), the co-plaintiff, Nancy Tree (who in the meantime had married Ronald L. Tree, plaintiff herein) and Marshall Field entered into a written agreement subsequently dated July 14, 1920 (R. 16). That agreement provided that a decree might be entered in the then pending equity suit sustaining Mrs. Tree's dower claim as against Marshall and all persons claiming a trust interest under him, and that there should be paid to Mrs. Tree in satisfaction of her dower a fixed life annuity of $75,000 (later changed by agreement to $85,000) so long as Marshall, or any persons claiming under him, should receive the net income from Henry's share of the trust (R. 16-17). On July 13, 1920, a final decree was entered holding, among other provisions, that, since the only beneficiary who would be affected by the allowance of Mrs. Tree's dower claim, so long as the income from Henry's share of the trust should be payable to or subject to the disposition of Marshall, was Marshall, and since Marshall was agreeable to the allowance of her dower claim, she was entitled to dower as against Marshall and all persons claiming a trust interest under him for the period that the income from Henry's share should be payable to or subject to the disposition of Marshall (R. 12-16).

The agreement of July 14, 1920, between Marshall Field and Mrs. Tree, and the later agreement increasing the annuity to $85,000 a year, were delivered to the trustees who, finding the net income sufficient, each year paid the agreed annuity out of Henry's share (to which Marshall had succeeded) of the realty income (R. 16-18).

The plaintiff, Ronald L. Tree, following a ruling by the Commissioner of Internal Revenue that the annuity was

not taxable to Mrs. Tree, filed joint income tax returns for himself and Mrs. Tree for the taxable years 1930 and 1931 here in controversy (R. 19-21). Later, however, the Commissioner reversed his ruling, and imposed the tax on the annuity which was challenged in the Court of Claims (R. 21-24).

The Court of Claims held that the annuity was taxable to Mrs. Tree as dower income or as income received by the assignee of a trust beneficiary, and that the agreement with Marshall Field, providing for an annual sum certain irrespective of the sufficiency of the trust income, was merely to be regarded as an "additional promise" which did not affect "the nature of Mrs. Tree's interest." It is the plaintiffs' position that, while the *trustees* could make the payments only out of income, the agreement with Marshall Field for payment of the sum certain was the element which gave to the plan and resultant transactions their very existence and character, and that the disregard of this element by the Court of Claims created a conflict with decisions of this Court.

Specification of Errors to Be Urged

The Court of Claims erred:

1. In treating the agreement for unconditional payment of the annuity as a mere incident to the transactions involved rather than as a vital and determinative part of them.

2. In holding that Mrs. Tree was an assignee of a part of the trust income.

3. In holding that the annuity was taxable to Mrs. Tree.

4. In failing to give judgment for the plaintiffs upon the basis of excluding the annuity from taxable income.

Reasons for Granting the Writ

1. The decision of the Court of Claims is in probable conflict with the decisions of this Court in *Burnet* v. *Whitehouse,* 283 U. S. 148, 75 L. Ed. 916, and *Helvering* v. *Butterworth, et al.,* 290 U. S. 365, 78 L. Ed. 365 (*Pardee* case). In these cases annuities provided by will were, in fact, paid out of income. Because, however, the annuities were payable "at all events," this Court held in each instance that the payment was not a distribution of income.

The fact that in the present case the annuity was provided for by a consent decree and concurrent agreement rather than by will, should not affect the result under the rule announced in *Lyeth* v. *Hoey,* 305 U. S. 188, 83 L. Ed. 119. In that case, an heir, left out of a will, entered into an agreement with the legatees, devisees, executors, and other heirs, under which he received property in compromise of his claim that the decedent's will was invalid. This Court held that the property was received by inheritance since the theory of heirship under an invalid will underlay the compromise, and that it was not taxable to the heir as income. Similarly, here one should look to the agreement (which alone mentioned the $85,000 annuity, the court decree being silent on the amount) to determine what Mrs. Tree received. It is a failure to give full effect to the *Lyeth* v. *Hoey* decision to say, as the Court of Claims did (R. 27, 28), that the agreement shows the kind of *interest*—dower—*for which Mrs. Tree was paid,* without also recognizing that the agreement determines the kind of *payment being made for that interest,* that is, an annuity payable *"at all events."*

The United States Board of Tax Appeals in *Chase National Bank, et al.* v. *Commissioner,* 40 B. T. A. 44, construed the *Lyeth* v. *Hoey* opinion as requiring it to give

effect to a provision for payment at all events in an agreement between a widow and the executors and trustees under her husband's will. The widow had threatened to enforce her rights as a widow adversely to the will and by the agreement received an annuity. The Board said that, in view of the certainty of payment of the annuity, the widow took by inheritance, citing the *Helvering* v. *Butterworth, Burnet* v. *Whitehouse,* and *Lyeth* v. *Hoey* decisions hereinbefore mentioned.

In our view, there is no fact in the case at bar to distinguish it from the above-cited decisions, and, if allowed to stand, the decision of the Court of Claims will be known [1] as in substantial conflict with, and as a confusing encroachment upon, principles announced by this Court.

2. The decision of the Court of Claims is also in probable conflict with the decision of this Court in *Blair* v. *Commissioner,* 300 U. S. 5, 81 L. Ed. 465.

The Court of Claims held that, if Marshall Field, rather than Mrs. Tree, was the beneficiary, then the consent decree and agreement constituted an assignment by Field to her of a portion of the trust income. This, said the Court, would make Mrs. Tree taxable on the authority of the *Blair* v. *Commissioner* decision. The *Blair* decision is limited, however, to holding that an assignee is taxable on trust income where there has been a valid transfer which makes the assignee the owner of an equitable interest in the trust. That Mrs. Tree did not have absolute ownership, as distinguished from the qualified interest of a creditor, is shown by the obvious fact that if Field had paid

[1] It may be worth noting that one of the tax services has digested the decision below under the caption "Earlier decisions to the contrary" following a statement of the *Lyeth* v. *Hoey* rule. CCH Standard Federal Tax Reporter, 1945, Vol. 1, paragraph 51.4893.

her $85,000 in a given year out of his own accumulations, she would not have been entitled to any part of the trust income for that year.

This conclusion that there was an assignment to Mrs. Tree was evidently the basis for the view below that the provision for payment at all events was analogous to a seller's guaranty in selling income-producing property that the purchaser will receive a specified minimum amount of income (R. 28, 29). The analogy wholly fails because in the hypothetical case there would be a transfer of the income-producing property and the property and the income therefrom would belong to the purchaser whereas in the case at bar, as mentioned hereinbefore, if Field had paid Mrs. Tree $85,000 in any year, clearly she would not have been entitled to any payment by the trustees. As in *Chase National Bank, et al.* v. *Commissioner*, 40 B. T. A. 44, payment of the annuity out of trust income was an arrangement to give the annuitant security for the annuity, and did not make her an income beneficiary of the trust.

There is, moreover, a serious question whether, under the *Blair* rule, there can be a valid assignment of a *stated amount* of trust income as distinguished from a specified *fractional part* of the income. The assignment of a fractional part of trust income is construed to be a transfer of ownership of the same fractional part of the property which produces the income, but the assignment of a stated amount of income, without reference to any ascertainable portion of the income-producing property, does not seem to constitute the assignment of any portion of the property itself.

This conflict with the *Blair* decision seems important enough alone to warrant an exercise of this Court's power of supervision.

Wherefore, it is respectfully submitted that this petition should be granted.

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